

ORDINANCE NO. \_\_\_\_\_, SERIES 2009

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, RELATING TO AUTHORIZING THE ISSUANCE, SALE AND DELIVERY, IN THE PRINCIPAL AMOUNT OF \$6,550,000, OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT LOUISVILLE MEDICAL CENTER REVENUE BONDS AND THE LOAN OF THE PROCEEDS THEREOF TO LOUISVILLE MEDICAL CENTER TO FINANCE THE PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY ON BEHALF OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY OF [1] A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS ON A NEGOTIATED BASIS, [2] A LOAN AGREEMENT PROVIDING FOR REPAYMENTS SUFFICIENT TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, AND [3] A SUPPLEMENTAL TRUST INDENTURE SECURING THE BONDS; AND PROVIDING FOR THE ACQUISITION OF THE PROPERTY; AND TAKING OTHER RELATED ACTION

Sponsored by: \_\_\_\_\_

Recitals

A. The Louisville/Jefferson County Metro Government, Kentucky (the “Metro”) is a political subdivision of the Commonwealth of Kentucky and is authorized by Sections 103.200 to 103.285 of the Kentucky Revised Statutes, as amended (the “Act”), to issue revenue bonds and to loan the proceeds thereof in order to accomplish thereby the public purposes of promoting the economic development of the Commonwealth of Kentucky (the “Commonwealth”), relieving conditions of unemployment, and encouraging the increase of industry therein, provided that such bonds are payable solely from the loan repayments and other revenues derived in respect of the loan and do not constitute an indebtedness of Metro within the meaning of the Constitution and laws of the Commonwealth.

B. Louisville Medical Center, Inc. (“LMC”), a Kentucky nonstock, nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, seeks (i) to finance the acquisition, construction, equipping and installation of new equipment of the Louisville Medical Center, Inc. Steam and Chilled Water Plant, located at 235 Abraham Flexner Way, Louisville, Kentucky 40202 (the “Plant”); (ii) to pay certain bank debts incurred for the purpose of financing on an interim basis such improvements to the Plant; and (iii) to pay all necessary and reasonable expenses in connection with the issuance of the Bonds including the costs of issuance of the Bonds. (the “Project”).

C. Pursuant to Ordinance No. 11, Series 2002 of the County of Jefferson, Kentucky, (the "County") enacted on March 12, 2002, the County authorized the issuance of the County of Jefferson, Kentucky Louisville Medical Center Refunding and Revenue Bonds, Series 2002, in the principal amount of \$18,000,000 dated as of May 15, 2002 (the "2002 Bonds") and the Trust Indenture, executed by and between the County and Bank of Louisville, Louisville, Kentucky, as Trustee, providing for the issuance of the 2002 Bonds (the "Indenture").

D. Jewish Hospital & St. Mary's Healthcare, Inc., a Kentucky nonstock, nonprofit corporation ("JHSMS"), Norton Healthcare, Inc., a Kentucky nonstock, nonprofit corporation ("Norton"); University Medical Center, Inc., a Kentucky nonstock, nonprofit corporation, d.b.a. "University of Louisville Hospital" ("U of L Hospital"); University of Louisville, a public institution of higher education and an independent instrumentality of the Commonwealth of Kentucky ("U of L"); and Kentucky Community & Technical Colleges System, a public institution of higher education existing under and by virtue of the laws of the Commonwealth of Kentucky ("JCC") (JHSMH, Norton, U of L Hospital, U of L and JCC are collectively referred to as "User Institutions") purchase all of the steam and chilled water necessary for space heating and air conditioning their present buildings and pay the operating costs of the Plant including a sufficient amount to pay the debt service of the 2002 Bonds, the debt service of any Additional Bonds and all other indebtedness related to the operation of the Plant pursuant to the terms of a User Contract by and between the User Institutions, or their predecessors, the County and LMC (the "User Contract").

E. The County created the Medical Center Commission, a public agency of Metro (the "Commission") to operate and manage the Plant. The Commission also operates and manages a central laundry facility utilized by JHHS, Norton and U of L Hospital. In accordance with an Agreement dated October 16, 1981, between Metro and the Commission (the "Agreement"), the Commission shall continue to operate and manage the Plant until the termination date set forth in the Agreement, as it may be amended from time to time.

F. Metro, as the successor political subdivision to the County, is authorized, pursuant to the Indenture and the User Contract, to issue Additional Bonds (as defined in the Indenture and the User Contract) ranking on parity with the 2002 Bonds as to security and source of payment to expand or improve the Plant, provided that: (1) the Plant shall prove insufficient to provide all of the steam and chilled water requirements of the User Institutions (as defined in the User Contract), (2) the Board of Directors of LMC approves such expansion or improvements, (3) a Qualified Engineer (as defined in the User Contract) certifies that such expansion or improvements are necessary or desirable for the continued operation of the Plant; and (4) an opinion of counsel, recognized favorably on a national basis in such matters, shall be obtained to the effect that the interest on such parity bonds and on the 2002 Bonds will not be or become taxable pursuant to the Federal income tax law or laws of Kentucky;

G. The Louisville/Jefferson County Metro Government, Kentucky Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 in the principal amount of \$6,550,000 (the "2009 Bonds") will be used pursuant to the act as Additional Bonds under the Indenture and the User Contract ranking on parity as to security and source of payment with the 2002 Bonds, for the purpose of loaning the proceeds thereof to LMC to finance the Project.

H. All of the conditions precedent to the issuance of Additional Bonds under the Indenture and the User Contract will be satisfied as of the date of the issuance of the 2009 Bonds.

I. The User Institutions have agreed in the User Contract to pay for the cost of and use the steam and chilled water produced by LMC. The cost of the steam and chilled water produced by LMC includes the cost of the 2002 Bonds and the 2009 Bonds.

J. Prior to the adoption of this Ordinance and following published notice, the Jefferson County Attorney conducted a public hearing affording an opportunity for members of the public to express their views regarding the Project and the Bonds.

K. In order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, Metro considers it necessary and proper to [i] authorize the issuance of its Tax Exempt Bonds (Louisville Medical Center Project), Series 2009, in the aggregate principal amount not to exceed \$6,550,000 (the "Bonds") as Additional Bonds under the Indenture and User Contract ranking on parity as to security and source of payment with the 2002 Bonds, and for the purpose of financing the Project, [ii] authorize the execution and delivery of the Supplemental Indenture, Loan Agreement, and Bond Purchase Agreement hereinafter identified; and [iii] take other action in connection therewith.

NOW, THEREFORE, BE IT ORDAINED BY THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY ACTING BY AND THROUGH ITS COUNCIL, AS FOLLOWS:

## ARTICLE I. PURPOSES

SECTION 1.1. Recitals. Metro Council finds and declares that the recitals are true and correct and are incorporated by reference in this Section.

SECTION 1.2. Declaration of Public Purposes. Metro Council hereby finds and declares that the issuance of the 2009 Bonds for the purpose of financing the Project will further the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry in the Commonwealth.

## ARTICLE II. AUTHORIZATION OF BONDS AND BOND DOCUMENTS AND DESIGNATION OF TRUSTEE

SECTION 2.1. Authorization of the Bonds. For the purpose of providing bonds to finance the cost of the Project and to pay the necessary expenses in connection therewith, there is hereby authorized and directed:

(A) the issuance, execution, sale, and delivery of the negotiable revenue bonds of Metro to be known and designated as "Louisville/Jefferson County Metro Government,

Kentucky, Louisville Medical Center Tax Exempt Bonds, Series 2009” in the principal amount not to exceed \$6,550,000 as provided in the Supplemental Indenture; and

(B) the loan of the proceeds of the 2009 Bonds to LMC for the purpose of financing the Project, as provided in the Loan Agreement.

SECTION 2.2. Authorization of Supplemental Indenture. The Mayor and Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of Metro a Supplemental Trust Indenture (the “Supplemental Indenture”) between Metro and U.S. Bank National Association, as Trustee, substantially in the form attached hereto as Exhibit A.

SECTION 2.3. Authorization of Loan Agreement. The Mayor and Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of Metro a Loan Agreement (the "Loan Agreement") between Metro, as lender, and LMC, as borrower, substantially in the form attached hereto as Exhibit B, providing for loan repayments sufficient to pay the principal of, premium, if any, and interest on the 2009 Bonds.

SECTION 2.4. Authorization of Bond Purchase Agreement. The Mayor is hereby authorized and directed to execute and deliver on behalf of Metro a Bond Purchase Agreement (the "Bond Purchase Agreement") among Metro, LMC, and Fifth Third Bank, Inc., as Purchaser, substantially in the form attached hereto as Exhibit C, providing for the sale of the Bonds upon a negotiated basis.

SECTION 2.5. Authorization of Supplemental and Amended Mortgage. The Mayor is hereby authorized and directed to execute and deliver on behalf of Metro a Supplemental and Amended Mortgage (the "Mortgage") among Metro, LMC, and U.S. Bank National Association, substantially in the form attached hereto as Exhibit D, providing for the sale of the Bonds upon a negotiated basis.

SECTION 2.6. Designation of Trustee. U.S. Bank National Association, successor Trustee of the Indenture, is hereby designated as the corporate trustee under the Supplemental Indenture and also as paying agent and bond registrar for the 2009 Bonds.

### ARTICLE III. SALE AND CHARACTER OF BONDS

SECTION 3.1. Negotiated Sale. Metro shall negotiate the sale of the 2009 Bonds pursuant to the terms of the Bond Purchase Agreement, and pursuant to the Supplemental Indenture, the Trustee shall provide for the 2009 Bonds to be authenticated and delivered in accordance therewith.

SECTION 3.2. Special and Limited Obligation. IT IS HEREBY FOUND, DECLARED, AND DETERMINED THAT THE 2009 BONDS ARE NOT GENERAL OBLIGATIONS OF METRO; THAT NEITHER THE 2009 BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF METRO OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE 2009 BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY LMC UNDER THE LOAN

AGREEMENT, BY THE MORTGAGE AND BY AMOUNTS TO BE PAID PURSUANT TO THE USER CONTRACT. NO COSTS OF THE PROJECT WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, ASSETS, PROPERTIES, OR OTHER CONTRIBUTIONS OF METRO. NO METRO FUNDS SHALL BE EXPENDED ON THE PROJECT EXCEPT SUCH FUNDS AS ARE DERIVED FROM THE SALE OF THE 2009 BONDS.

ARTICLE IV.  
TAX AND ARBITRAGE COVENANTS

SECTION 4.1. General. Metro covenants that sums derived from the proceeds of the 2009 Bonds or any other funds which may be deemed to be proceeds of the 2009 Bonds pursuant to Section 148 of the Code shall not be applied in a manner which would cause the 2009 Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code and the applicable Regulations thereunder and that the Issuer shall comply with the requirements of Section 148 of the Code and the applicable Regulations.

SECTION 4.2. Qualified Section 501(c)(3) Bonds. The 2009 Bonds are qualified Section 501(c)(3) Bonds under the meaning of Section 145(a) of the Code because the property that is to be provided by the net proceeds of the 2009 Bonds is owned by a 501(c)(3) organization or governmental unit and the net proceeds of the bonds will be used by a 501(c)(3) organization in furtherance of its exempt purposes or by a governmental unit.

SECTION 4.3. Arbitrage and Rebate Covenants. In furtherance of its covenant to avoid any act that would cause the 2009 Bonds to be considered arbitrage bonds within the meaning of Section 148 of the Code, Metro covenants as follows:

(A) Except as permitted by Section 148 of the Code, none of the proceeds of the 2009 Bonds shall be used directly or indirectly (i) to acquire “higher yielding investments” defined in said Section 148 as any investment property which produces a yield over the term of the 2009 Bonds which is materially higher than the yield on the 2009 Bonds, or (ii) to replace funds which were used directly or indirectly to acquire higher yielding investments.

(B) If any portion of the gross proceeds of the Bonds has not been expended in accordance with the spending requirements above, Metro shall cause LMC to pay, from amounts received under the User Contract, the Rebate Amounts (as defined in the Loan Agreement) to the United States.

(C) Except as provided in the applicable income tax regulations with respect to the purchase of obligations in the United States Treasury directly from the United States Treasury, at no time shall any of the gross proceeds of the 2009 Bonds be invested (a) in nonpurpose investments having a purchase price which is not equal to the purchase price of comparable investments or producing a yield which is not equal to the fair market yield of comparable investments or (b) in any other manner resulting in a “prohibited payment” (within the meaning of Section 148 of the Code and the applicable regulations thereunder) of any portion of the Rebate Amount, directly or indirectly, to a person other than the United States.

SECTION 4.4. Bond Fund. The Bond Fund as defined in the Supplemental Indenture (a) will be used primarily to achieve a proper matching of revenues and debt service within each period

beginning on the Issue Date and ending on April 30, 2010 and thereafter within each one year period ending on April 30 (the “Bond Year”) and (b) will be depleted at least once each Bond Year to an amount not to exceed the greater of the prior Bond Year’s earnings on the Bond Fund or 1/12th of the prior Bond Year’s Debt Service on the Bonds.

SECTION 4.5. No Election to Waive Unrestricted Investment Rights. The Issuer does not elect to waive any temporary period or minor portion allowance with respect to the 2009 Bonds, as provided in Section 1.148-2(h) of the Regulations. The minor portion with respect to the 2009 Bonds is \$100,000, which is equal to the lesser of (a) 5% of the sale proceeds of the 2009 Bonds or (b) \$100,000.

SECTION 4.6. Private Activity Bond Volume Cap. Pursuant to Section 146(g)(2) of the Code, no allocation of private activity bond volume cap is required or has been made for the 2009 Bonds since the 2009 Bonds are Section 501(c)(3) bonds.

SECTION 4.7. Federal Guaranty. The 2009 Bonds are not and will not be guaranteed (in whole or in part), directly or indirectly, by the United States or any of its agencies or instrumentalities.

SECTION 4.8. Hedge Bonds. The 2009 Bonds are not “hedge bonds” within the meaning of Section 149(g) of the Code and Section 1.149(g)-1.

SECTION 4.9. Registration. Pursuant to the Indenture, the 2009 Bonds are issued only as fully registered bonds, without coupons, and are transferable only upon the registration books maintained by the Trustee.

SECTION 4.10. Arbitrage Certification. Prior to or at the time of delivery of the Bonds, the Mayor who is charged with the responsibility for the issuance of the 2009 Bonds is authorized to execute the appropriate certification with reference to the matters required and contemplated by Section 148 of the Code and the regulations thereunder, setting out all known and contemplated facts concerning the anticipated expenditures, construction and investments, including the execution of any certifications contemplated by Section 148 of the Code and the regulations thereunder in order to assure that interest on the 2009 Bonds will be exempt from all federal income taxes and that the 2009 Bonds will not be treated as arbitrage bonds. The Mayor is entitled to rely upon information furnished by LMC in making such certifications and representations unless he is aware of any facts or circumstances or representations that are erroneous.

## ARTICLE V.

### ADDITIONAL BONDS AND DEFEASANCE OF PRIOR BONDS

SECTION 5.1. Additional Bonds. Pursuant to the terms of the Indenture, while any of the 2002 Bonds or 2009 Bonds are outstanding, Metro shall not issue any additional bonds or incur any other obligations payable from the income and revenue of the Plant unless the lien and security of such bonds or other obligations on the revenues is made junior or subordinate in all respects to the lien and security of the 2002 Bonds and 2009 Bonds; provided, however, that Metro reserves the right to issue additional revenue bonds, which will rank on parity as to security and source of payment with the 2002 Bonds and 2009 Bonds, upon the conditions and subject to the restrictions set forth in the Indenture.

ARTICLE VI.  
MISCELLANEOUS

SECTION 6.1. Further Acts and Deeds. The Mayor, Metro Council Clerk, the Assistant Jefferson County Attorney, and other appropriate officers and employees of Metro are hereby authorized and directed to execute, acknowledge, and deliver on behalf of Metro any and all agreements, instruments, certificates, and other documents and to do and cause to be done any and all acts and things necessary or proper for entering into and effecting this Bond Ordinance, the Bond Purchase Agreement, the Supplemental Indenture, the Loan Agreement and the 2009 Bonds, and the payment and retirement of the Prior Bonds, provided that neither Metro nor any of its elected officials, officers, employees, or agents shall incur any general liability thereby.

SECTION 6.2. Covenants of Metro. All covenants and agreements of Metro contained in this Ordinance, the Supplemental Indenture, the Loan Agreement, and the Bond Purchase Agreement (collectively, the "Bond Documents") shall be deemed to be the covenants and agreements of Metro to the full extent authorized or permitted by law, and such covenants and agreements shall be binding upon Metro and its successors from time to time and upon any board or body, including the Commission, to which any powers or duties, affecting such covenants and agreements shall be transferred by or in accordance with law. Except as otherwise provided in the Ordinance, all rights, powers and privileges conferred and duties and liabilities imposed upon Metro by the provisions of the Bond Documents shall be exercised or performed by Metro by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties. No covenant or agreement contained in the Bond Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of Metro or of the Commonwealth of Kentucky in his individual capacity and neither the members of Metro Council nor any officer executing the 2009 Bonds shall be liable personally on the 2009 Bonds or be subject to any personal liability by reason of the issuance of the 2009 Bonds.

SECTION 6.3. Severability. The provisions of this ordinance are severable, and if any section, phrase, or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this ordinance.

SECTION 6.4. Prior Conflicting Actions Superseded. To the extent that any ordinance, resolution, order, or part thereof is in conflict with the provisions of this ordinance, the provisions of this ordinance shall prevail and be given effect.

SECTION 6.5. Effective Date. The ordinance shall become effective upon its passage and approval.

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened regular meeting of Metro Council of Jefferson County, Kentucky, held on August 13, 2009.

GIVEN SECOND READING AND ENACTED at a duly convened regular meeting of Metro Council held on August 27, 2009, signed by the Mayor as evidence of his approval,

attested under seal by Metro Council Clerk, and ordered to be published in summary form, filed, and indexed as provided by law.

[SEAL]

Attest:

\_\_\_\_\_  
Kathleen J. Herron, Metro Council Clerk

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

Approved as to form and legality:

Mike O'Connell  
Metro Attorney

By \_\_\_\_\_  
James T. Carey  
Assistant Jefferson County Attorney



## CERTIFICATE

The undersigned certifies that she is the duly appointed Metro Council Clerk of Louisville/Jefferson County Metro Government, Kentucky, that the foregoing ordinance was duly enacted at a duly convened regular meeting of Metro Council held on August 27, 2009, that all actions taken in connection with the ordinance were in compliance with the requirements of KRS 61.805 to 61.850, and that the ordinance is now in full force and effect, all as appears from the official records of Metro Council in my custody and under my control.

WITNESSETH my hand and the seal of Metro this 27<sup>th</sup> day of August 2009.

---

Metro Council Clerk

(SEAL)

105146.130796/587326.3